

IN RE: PETITION FOR SPECIAL HEARING  
S/S Northdale Road, 160' E of  
the c/l of Harlem Lane  
(6161 Northdale Road)  
1st Election District  
1st Councilmanic District  
Richard F. O'Brien, et al  
Petitioners  
\* BEFORE THE  
\* DEPUTY ZONING COMMISSIONER  
\* OF BALTIMORE COUNTY  
\* Case No. 92-237-SPH

#### FINDINGS OF FACT AND CONCLUSIONS OF LAW

This matter comes before the Deputy Zoning Commissioner as a Petition for Special Hearing seeking approval of a nonconforming use of the subject property as two apartments, as more particularly described on Petitioner's Exhibit 4.

The Petitioners, Richard and Louis O'Brien, are the owners of the subject property. The Petitioners were represented by R. Francis O'Brien, Esquire. Appearing and testifying in support of the Petitioners' request was Robert Mott, a nearby resident. Many residents of the surrounding neighborhood appeared in opposition to the Petitioners' request.

Testimony indicated that the subject property, known as 6161 Northdale Road, consists of .075 acres zoned D.R. 10.5 and is improved with a two-story end-of-group townhouse dwelling. The Petitioners are desirous of establishing a legal, nonconforming use of the subject property as a two-apartment dwelling unit. Testimony indicated they filed the instant Petition as a result of a complaint filed with the Zoning Office.

Robert Mott, who resides at 6158 Regent Park Road, appeared and testified on behalf of the Petitioners. Mr. Mott testified that he has lived in the neighborhood for 41 years and lives directly behind the subject property. Mr. Mott testified that the subject dwelling was constructed in the early 1950s as two apartments. He testified that a Mr. Armstrong

purchased the house and resided in the first floor apartment in 1953. Although Mr. Mott stated that he never went inside the dwelling, he could see people living in both the upstairs and downstairs apartments. Mr. Mott went on to testify that in approximately 1961, a Mr. Baker purchased the property. Testimony revealed that Mr. Baker resided in the first floor apartment and had rented out the upstairs apartment for a period of time, but later evicted the tenant. Mr. Mott testified that Mr. Baker then occupied the premises for approximately 10 years and that no one occupied the upstairs apartment for this 10-year period. Mr. Mott did go on to add that a housekeeper had resided in the basement of the dwelling for a period of time; however, the evidence is clear that the upstairs apartment had not been rented for approximately 10 years during the time that Mr. Baker owned the property.

Louis O'Brien, one of the property owners, testified concerning the subject property. Mr. O'Brien testified that he purchased the subject property in the Fall of 1989. He testified that at the time of purchase, there were two apartments existing in the dwelling. He stated that the house was in poor condition and badly needed cleaning. This was particularly true of the upstairs apartment.

Richard O'Brien, brother of Louis and the other owner of the property, also testified. Mr. O'Brien basically corroborated the testimony of his brother and added that he had contacted BG & E and C & P to obtain past gas and electric and telephone records for the premises but was informed that no records were not kept for that particular period of time.

George Fallon, appearing on behalf of the Protestants, testified that they are generally opposed to the relief requested. His testimony indicated that most of the dwellings in the neighborhood that had previous-

- 2 -

ly been used as multi-family dwellings had been converted to single family dwellings and that the Protestants were opposed to the use of the subject property as two apartments.

The standard to legitimize a nonconforming use is set forth within Section 104 of the B.C.Z.R. Specifically, Section 104.1 provides:

"A nonconforming use (as defined in Section 101) may continue except as otherwise specifically provided in these regulations; provided that upon any change from such nonconforming use to any other use whatsoever, or any abandonment or discontinuance of such nonconforming use for a period of one year or more, the right to continue or resume such nonconforming use shall terminate."

It is clear that the nonconforming use presented in this case predates 1955 which is the controlling year for nonconforming use purposes. However, the Petitioners must show that the property has not undergone any change, been abandoned or been discontinued for a period in excess of 1 year. Simply stated, the entire case turns on whether Mr. Baker's failure to actively lease the upstairs apartment over that 10-year period invalidates the otherwise proper use.

Both sides have set forth their arguments on this issue in written memorandum. Both memoranda were well-prepared and set forth the position offered by each side. In essence, the Petitioners note that the dwelling in and of itself remains in the exact configuration as when it was constructed in 1953, which is before the controlling date. Further, the Petitioners note that there has been no intention to abandon the use, nor some overt act which carries the implication that the owners neither claim nor retain an interest in the use. The Petitioners cite Maryland case law in support of their position.

- 3 -

As to the Protestants, they argue that the failure of the property owners to lease the upstairs apartment for a period of 11 years severs the nonconforming use.

As is required in any case where a statute and/or regulation need be interpreted, the first task is to carefully examine the wording used by the legislature. See Falcone v. Palmer Ford, Inc., 219 A2d 808 242 Md. 4871 (1966) and State v. Fabritz, 348 A2d 275, 276 Md. 416 (1975). In this instance, it must be noted that the County Council designated three conditions within Section 104.1 of the B.C.Z.R. which would terminate an otherwise proper nonconforming use. They are; (1) whether there has been any change from the use to another use; or (2) whether said use has been abandoned; or (3) whether said use has been discontinued. Further, these three (3) tests, by use of the word "or", are presented in the disjunctive. Clearly, therefore, the Petitioners must prove that they have satisfied each test for this nonconforming use to continue.

As to the first test, the Petitioners have met their burden. The evidence is uncontradicted that there has been no change in the design of the structure as two apartments. The property retains the same physical characteristics and floor plan as when built as a two-family dwelling.

As to the second prong regarding abandonment, one need examine the applicable case law. The propriety of nonconforming uses and the abandonment of same was comprehensively addressed by the Court of Appeals in Landay v. Board of Zoning Appeals, et al, 173 Md. 460 (1938). This case arose out of Baltimore City and set forth the legal definition of the term "abandonment". This definition remains valid today. Within that case, the Court held that:

"Abandonment in law depends upon the concurrence of two, and only two, factors; one, an intention

- 4 -

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

to abandon or relinquish; and two, some overt act or some failure to act, which carries the implication that the owner neither claims nor retains any interest in the subject matter of the abandonment." Landay, page 469-470.

This principal of law has been upheld numerous times by the Appellate Courts of this State. For example, in Canada's Tavern, Inc. v. Town of Glen Echo, 260 Md. 206 (1970), the Court noted its approval of the Landay definition of abandonment.

Applying that definition to the instant case, I must conclude that there has been an abandonment. It was stated by Mr. Mott in his testimony that Mr. Baker had a disagreement with his tenant in 1961 and evicted her. From that point forward, the second floor apartment remained vacant for 10 years. I find that the overt act of the eviction of the tenant, coupled with a lapse in occupancy of the second floor apartment for a period of 10 years satisfies the requirements of an abandonment. Furthermore, Landay at Page 470 goes on to say: "Time is 'not an essential element' of abandonment, although the lapse of time may be evidence of an intention to abandon." Because of this extraordinary lapse of time, and for the other reasons cited, I find that there has been an abandonment of this nonconforming use.

The Petitioners must also show that there has been no discontinuance of the use of this property as two apartments. I also find that the Petitioners have failed to so establish.

Although the term "discontinuance" within Webster's Third New International Dictionary can be construed to mean abandonment, I do not believe that the Council intended that word to be so defined in Section 104.1. If that were their intent, the regulations would be unnecessarily repetitious. Rather, the use of the phrase, "abandonment or discontinu-

ance", suggests that the Council intended that there be two different litmus tests in order for a nonconforming use to be permitted. Further, Webster also defines "discontinue" as to break off, give up, or end operations. That is, discontinuance can be defined as when the use has ceased, notwithstanding the owner's intent. In applying this broader definition to the facts presented, it is abundantly clear that the use has been discontinued in this case. Mr. Baker apparently made no effort to secure tenants for a lengthy period. Certainly, for an apartment use to exist, there must be a landlord and tenant relationship and a lease; conditions which do not exist in the instant case. Under these circumstances, it must follow that the Petitioners have not met this additional burden and the Petition must, therefore, be denied.

Pursuant to the advertisement, posting of the property, and public hearing on this Petition held, and for the reasons given above, the Petition for Special Hearing should be denied.

THEREFORE, IT IS ORDERED by the Deputy Zoning Commissioner of Baltimore County this 27th day of February, 1992 that, pursuant to the Petition for Special Hearing seeking approval of a nonconforming use of the subject property, known as 6161 Northdale Road, as two apartments, in accordance with Petitioner's Exhibit 4, be and is hereby DENIED.

TMK:bjs

TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

- 6 -

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

(410) 887-4386

February 27, 1992

R. Frances O'Brien, Esquire  
Venable, Baetjer & Howard  
One Church Street  
Rockville, Maryland 20849-1906

RE: PETITION FOR SPECIAL HEARING  
S/S Northdale Road, 160' E of the c/l of Harlem Lane  
(6161 Northdale Road)  
1st Election District - 1st Councilmanic District  
Richard F. O'Brien, et al - Petitioners  
Case No. 92-237-SPH

Dear Mr. O'Brien:

Enclosed please find a copy of the decision rendered in the above-captioned matter. The Petition for Special Hearing has been denied in accordance with the attached Order.

In the event any party finds the decision rendered is unfavorable, any party may file an appeal to the County Board of Appeals within thirty (30) days of the date of this Order. For further information on filing an appeal, please contact Ms. Charlotte Radcliffe at 887-3391.

Very truly yours,

Timothy M. Kotroco  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Mr. George Fallon  
332 Greenlow Road, Baltimore, Md. 21228

Mr. John O'Ferrall  
411 Whitfield Road, Baltimore, Md. 21228

Ms. E. A. Nitsch  
6127 Northdale Road, Baltimore, Md. 21228

People's Counsel  
[Signature]

## Petition for Special Hearing #252

to the Zoning Commissioner of Baltimore County 92-237-SPH

The undersigned, legal owner(s) of the property situate in Baltimore County and which is described in the description and plat attached hereto and made a part hereof, hereby petition for a Special Hearing under Section 500.1 of the Baltimore County Zoning Regulations, to determine whether or not the Zoning Commissioner and/or Deputy Zoning Commissioner should approve the pre-existing use or nonconforming use of 6161 Northdale Road, Catonsville as two apartments prior to 1955.

Property is to be posted and advertised as prescribed by Zoning Regulations.

I, or we, agree to pay expenses of the above Special Hearing advertising, posting, etc., upon filing of this Petition, and further agree to and are to be bound by the zoning regulations and restrictions of Baltimore County adopted pursuant to the Zoning Law for Baltimore County.

I/We do solemnly declare and affirm, under the penalties of perjury, that I/we are the legal owner(s) of the property which is the subject of this Petition.

Contract Purchaser/Lessee:

(Type or Print Name)

Signature

Address

City and State

Attorney for Petitioner:

R. Frances O'Brien

(Type or Print Name)

Signature

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

R. Frances O'Brien or Richard F. O'Brien

Name

Address

Attorney's Telephone No.: (301) 217-5600

Legal Owner(s):

Richard F. O'Brien

(Type or Print Name)

Signature

Address

City and State

Signature

(Type or Print Name)

Address

City and State

Name, address and phone number of legal owner, contract purchaser or representative to be contacted

R. Frances O'Brien or Richard F. O'Brien

Name

Address

Attorney's Telephone No.: (301) 217-5600

ORDER RECEIVED FOR FILING

Date 2/27/92

By [Signature]



ESTIMATED LENGTH OF HEARING - 1/2HR.  
AVAILABLE FOR HEARING  
MON./TUES. (MOR) - NEXT TWO MONTHS THRU FR.  
REVISED BY: LK DATE 12-5-91

252

ORDER RECEIVED FOR FILING  
Date 2/27/92  
By [Signature]

# ZONING DESCRIPTION

Beginning at a point on the south side of Northdale Road which is 55' wide at the distance of 160' east of the centerline of the nearest improved intersecting street Harlem Lane which is 50' wide. Being the subdivision of Academy Heights as recorded in Baltimore County Plat Book #17, Folio #24 (no lot number specified) containing 3255 square feet. Known as 6161 Northdale Road and located in the 1st Election District.

## CERTIFICATE OF POSTING ZONING DEPARTMENT OF BALTIMORE COUNTY Towson, Maryland

District: 1st Date of Posting: December 23, 1991  
Posted for: Special Hearing  
Petitioner: Richard F. O'Brien and Louis F. O'Brien  
Location of property: 1/2 Northdale Road, 160' E of 1/2 Harlem Lane  
6161 Northdale Road  
Location of Sign: In front of 6161 Northdale Road  
Remarks: See front of 6161 Northdale Road  
Posted by: S. J. O'Brien Date of return: December 27, 1991  
Number of Signs: 1

## CERTIFICATE OF PUBLICATION

TOWSON, MD., 12/23, 1991  
THIS IS TO CERTIFY, that the annexed advertisement was published in THE JEFFERSONIAN, a weekly newspaper published in Towson, Baltimore County, Md., once in each of 1 successive weeks, the first publication appearing on 12/19, 1991.

THE JEFFERSONIAN,

Publisher

\$ 57.14

Baltimore County  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Date

Account: R-001-6150  
Number

Cashier Validation

Baltimore County  
Zoning Commissioner  
County Office Building  
111 West Chesapeake Avenue  
Towson, Maryland 21204

receipt

Date

Account: R-001-6150  
Number

Cashier Validation

Please Make Checks Payable To: Baltimore County  
CP 0110 12/24/91

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

DATE: 12/23/91

Richard F. O'Brien and Louis F. O'Brien  
6161 Northdale Road  
Catonsville, Maryland 21228

RE:  
CASE NUMBER: 92-237-SPH  
S/S Northdale Road, 160' E of c/l Harlem Lane  
6161 Northdale Road  
1st Election District - 1st Councilmatic  
Petitioner(s): Richard F. O'Brien and Louis F. O'Brien

Dear Petitioner(s):

Please be advised that \$ 57.14 is due for advertising and posting of the above captioned property.

THIS FEE MUST BE PAID. ALSO, THE ZONING SIGN & POST SET(S) MUST BE RETURNED ON THE DAY OF THE HEARING OR THE ORDER SHALL NOT BE ISSUED. DO NOT REMOVE THE SIGN & POST SET(S) FROM THE PROPERTY UNTIL THE DAY OF THE HEARING.

Please forward your check via return mail to the Zoning Office, County Office Building, 111 W. Chesapeake Avenue, Room 113, Towson, Maryland 21204. It should have your case number noted thereon and be made payable to Baltimore County, Maryland. In order to prevent delay of the issuance of proper credit and/or your order, immediate attention to this matter is suggested.

*Carl J. Jahn*

ARNOLD JAHN  
DIRECTOR

cc: R. Frances O'Brien

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

DECEMBER 11, 1991

## NOTICE OF HEARING

The Zoning Commissioner of Baltimore County, by authority of the Zoning Act and Regulations of Baltimore County will hold a public hearing on the property identified herein in Room 118, Baltimore County Courthouse, 400 Washington Avenue, Towson, Maryland 21204 as follows:

CASE NUMBER: 92-237-SPH  
S/S Northdale Road, 160' E of c/l Harlem Lane  
6161 Northdale Road  
1st Election District - 1st Councilmatic  
Petitioner(s): Richard F. O'Brien and Louis F. O'Brien  
HEARING: WEDNESDAY, JANUARY 15, 1992 at 9:00 a.m.

Special Hearing to approve the pre-existing use or nonconforming use of 6161 Northdale Road as two apartments prior to 1955.

*Lawrence E. Schmidt*  
Lawrence E. Schmidt

Zoning Commissioner of  
Baltimore County

cc: Richard F. O'Brien  
R. Frances O'Brien

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

December 26, 1991

R. Frances O'Brien  
Venable, Baetjer and Howard  
One Church Street  
Rockville, MD 20849-1906

RE: Item No. 252, Case No. 92-237-SPH  
Petitioner: Richard F. O'Brien,  
Petition for Special Hearing

Dear Mr. O'Brien:

The Zoning Plans Advisory Committee (ZAC) has reviewed the plans submitted with above referenced petition. The attached comments from each reviewing agency are not intended to assure that that all parties, i.e. Zoning Commissioner, attorney and/or the petitioner, are made aware of plans or problems with regard to the proposed improvements that may have a bearing on this case.

Enclosed are all comments submitted thus far from the members of ZAC that offer or request information on your petition. If additional comments are received from other members of ZAC, I will forward them to you. Otherwise, any comment that is not informative will be placed in the hearing file. This petition was accepted for filing on the date of the enclosed filing certificate and a hearing scheduled accordingly.

The following comments are related only to the filing of future zoning petitions and are aimed at expediting the petition filing process with this office.

1) The Director of Zoning Administration and Development Management has instituted a system whereby seasoned zoning attorneys who feel that they are capable of filing petitions that comply with all aspects of the zoning regulations and petitions filing requirements can file their petitions with this office without the necessity of a review by Zoning personnel.

Zoning Plans Advisory Committee Comments  
Date: December 26, 1991  
Page 2

2) Anyone using this system should be fully aware that they are responsible for the accuracy and completeness of any such petition. All Petitions filed in this manner will be reviewed and commented on by Zoning personnel prior to the hearing. In the event that the petition has not been filed correctly, there is always a possibility that another hearing will be required or the Zoning Commissioner will deny the petition due to errors or incompleteness.

3) Attorneys and/or engineers who make appointments to file petitions on a regular basis and fail to keep the appointment without a 72 hour notice will be required to submit the appropriate filing fee at the time future appointments are made. Failure to keep these appointments without proper advance notice, i.e. 72 hours, will result in the loss of filing fee.

Very truly yours,

*James E. Dyer*  
JAMES E. DYER  
Chairman  
Zoning Plans Advisory Committee

JED:jw

Enclosures

cc: Mr. Richard F. O'Brien  
6161 Northdale Road  
Catonsville, MD 21228

111 West Chesapeake Avenue  
Towson, MD 21204

(410) 887-3353

Your petition has been received and accepted for filing this 5th day of December, 1991.

*Carl J. Jahn*  
ARNOLD JAHN  
DIRECTOR

Received By:  
*James E. Dyer*  
JAMES E. DYER  
CHAIRMAN  
ZONING PLANS ADVISORY COMMITTEE

Petitioner: Richard F. O'Brien

Petitioner's Attorney: Richard F. O'Brien



BALTIMORE COUNTY  
ECONOMIC DEVELOPMENT COMMISSION

Memorandum

TO: Julie Winarski  
Office of Zoning Administration and  
Development Management

FROM: A. J. Haley, Acting Director  
Economic Development Commission

DATE: December 20, 1991

RE: Zoning Advisory Comments for Meeting of December 17, 1991

This office has no comment for items 92-1, 233, 237, 245, 246, 247, 248, 249, 250, 251, 252 or 253.

RECEIVED  
DEC 26 1991  
ZONING OFFICE

BALTIMORE COUNTY, MARYLAND  
INTER-OFFICE CORRESPONDENCE

TO: Arnold Jablon, Director  
Zoning Administration and  
Development Management

FROM: Pat Keller, Deputy Director  
Office of Planning and Zoning

SUBJECT: O'Brien Property, Item No. 252

In reference to the applicant's request, staff offers no comments.

If there should be any further questions or if this office can provide additional information, please contact Jeffrey Long in the Office of Planning at 887-3211.

PK/JL:rdn  
NCOMTS/TXTROZ

BUREAU OF TRAFFIC ENGINEERING  
DEPARTMENT OF PUBLIC WORKS  
BALTIMORE COUNTY, MARYLAND

DATE: January 7, 1992

TO: Mr. Arnold Jablon, Director  
Office of Zoning Administration  
and Development Management

FROM: Rahee J. Famili

SUBJECT: Z.A.C. Comments

Z.A.C. MEETING DATE: December 17, 1991

This office has no comments for item numbers 233, 245, 246, 247, 248, 249, 250, 251, 252 and 253.

*Rahee J. Famili*  
Rahee J. Famili  
Traffic Engineer II

RJF/lvd

Baltimore County Government  
Fire Department

JANUARY 6, 1991

Arnold Jablon  
Director  
Zoning Administration and  
Development Management  
Baltimore County Office Building  
Towson, MD 21204

RE: Property Owner: RICHARD F. O'BRIEN AND LOUIS F. O'BRIEN  
Location: #6161 NORTHDAL ROAD  
Item No.: 252 Zoning Agenda: DECEMBER 17, 1991

Gentlemen:

Pursuant to your request, the referenced property has been surveyed by this Bureau and the comments below are applicable and required to be corrected or incorporated into the final plans for the property.

5. The buildings and structures existing or proposed on the site shall comply with all applicable requirements of the National Fire Protection Association Standard No. 101 "Life Safety Code", 1988 edition prior to occupancy.

REVIEWER: *[Signature]* Noted and  
Planning Group Approved  
Special Inspection Division Fire Prevention Bureau

JP/KEK

92-237-SPH 1-15

Baltimore County Government  
Zoning Commission  
Office of Planning and Zoning

Suite 113 Courthouse  
400 Washington Avenue  
Towson, MD 21204

March 10, 1992

(410) 887-4386

R. Frances O'Brien, Esquire  
Venable, Baetjer & Howard  
One Church Street  
Rockville, Maryland 20849-1900

RE: PETITION FOR SPECIAL HEARING  
8/5 Northdale Road, 160' E of the c/l of Harlem Lane  
(6161 Northdale Road)  
1st Election District - 1st Councilmanic District  
Richard F. O'Brien, et al - Petitioners  
Case No. 92-237-SPH

Dear Ms. O'Brien:

In response to your letter dated March 3, 1992 regarding the Post-Hearing Memoranda in the above-captioned matter, the following comments are offered.

While it is true that the Protestants' Memorandum was not received by you until February 14, 1992, there is an explanation for this delay. Mr. George Fallon, Treasurer of the Academy Heights Homeowners' Association, came in to my office on or about February 7, 1992 and advised me that he had not yet received your memorandum in this matter and asked whether one had been submitted for my review. It became apparent that the Homeowners' Association had not received a copy of your memorandum. I personally ran a copy of your memorandum for Mr. Fallon on that day and gave him one week from that day to submit his response.

By now I assume that you have received my decision in this matter. It would appear that my decision would render the remaining substance of your letter moot.

In the event you have any further questions on the subject, please feel free to contact me.

Very truly yours,

*Timothy M. Kotroco*  
TIMOTHY M. KOTROCO  
Deputy Zoning Commissioner  
for Baltimore County

TMK:bjs

cc: Mr. George Fallon  
332 Greenlow Road, Catonsville, Md. 21228

Case File

BEFORE THE ZONING COMMISSION OF BALTIMORE COUNTY, MARYLAND

IN RE:

PETITION OF RICHARD F. O'BRIEN : Case No. 92-237-SPH  
and LOUIS F. O'BRIEN :

POST HEARING MEMORANDUM

On January 15, 1992, Petitioners appeared before Deputy Zoning Commissioner Timothy Kotroco on a Petition for a special hearing to approve the pre-existing use or nonconforming use of 6161 Northdale Road, Catonsville, Maryland, as two apartments prior to 1955. After receiving testimony, Deputy Commissioner Kotroco granted the Petitioners' request to file a post trial memorandum in support of the Petition.

FACTS

In the spring of 1953, William and Mary Lu Armstrong moved into their newly built rowhome at 6161 Northdale Road, Catonsville, Maryland. Within a short period of time, they began renting out a second floor apartment to another couple.

Mr. Robert Mott testified as a fact witness regarding the history of the property. Mr. Mott has lived at 6158 Regent Park Drive since August, 1952. His testimony was clear and unequivocal that, virtually from the beginning, and certainly from the spring of 1953, the residence at 6161 Northdale Road has been two apartments. The two apartments have existed

BEFORE THE ZONING COMMISSION OF BALTIMORE COUNTY, MARYLAND

IN RE:

PETITION OF RICHARD F. O'BRIEN : Case No. 92-237-SPH  
and LOUIS F. O'BRIEN :

POST-HEARING MEMORANDUM REBUTTAL

FACTS

In 1953, William and Mary Lu Armstrong moved into the row home at 6161 Northdale Road, Catonsville, Maryland. Mr. Mott, a neighbor to the rear of the Armstrong's property, testified for the petitioners. Mr. Mott testified that he knew Mr. Armstrong only as a casual acquaintance, "Only to say hello". Also, Mr. Mott told the court that he saw a woman through the upstairs windows who he assumed to be Mr. Armstrong's tenant. Mr. Mott did not know the alleged tenant's name, nor did he know when she moved in or out.

In the fall of 1960 Mr. Armstrong sold the house to Clara M. and Myrl F. Baker. Mr. Mott stated that he knew Mr. Baker only as a casual acquaintance. Mr. Mott again testified that he saw a woman through the upstairs window who he assumed to be Mr. Baker's tenant. Again, Mr. Mott did not know the alleged tenant's name, nor did he know when she moved in or out. Mr.

RECEIVED  
FEB 14 1992  
ZONING COMMISSIONER



PLEASE PRINT CLEARLY

PETITIONER(S) SIGN-IN SHEET

NAME	ADDRESS
Robert C. McTi	6154 Academy Rd. 21228
Lucy Brown	6161 Northdale Rd. 21228
Blue Brown	6161 Northdale Rd. 21228
2 Frances O'Brien	One Court Street Apt 570
Venable Pastor Howard	Rockville, Md. 20849-1904

PROTESTANT(S) SIGN-IN SHEET

NAME	ADDRESS
ALFRED A. VOLKMAN	6129 Northdale Rd. 21228
AGNES E. GUERNAULT	337 GREENLOW RD. 21228
MARTHA B. STEWART	336 STRATFORD RD. 21228
MARY ELLEN MANNON	357 WHITFIELD RD. 21228
GRACE C. BRACATE	311 STRATFORD 21228
Jean Gaffney	310 Lambeth Rd. 21228
VERNON GAFFNEY	310 LAMBETH RD. 21228
ANNA A. BARNES	315 LAMBETH RD. 21228
LOUIS H. BARNES	" " " "
Charles N. Lenta Jr	317 Lambeth Rd. 21228
John J. Fearall	411 Whitfield 21228
GEORGE FALLON	332 GREENLOW 21228

Mr. and Mrs. William K. Hoover  
514 Academy Rd.  
Baltimore, Maryland 21228

January 14, 1992

Mr. Timothy Kotroco,  
Deputy Zoning Commissioner  
Old Court House  
Suite 113  
400 Washington Ave.  
Towson, MD 21204

Dear Mr. Kotroco:

RE: CASE # FOR HEARING  
IS: 92-237-SPH

We are unable to attend Jan. 15, 1992 hearing, but wish to be heard in our objection to the 2-apt. dwelling at 6161 Northdale Road, ACADEMY HEIGHTS.

PLEASE include us in the count AGAINST  
6161 Northdale Rd.

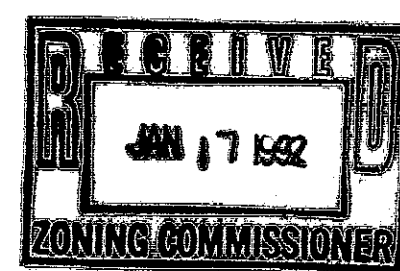
Thank you.

Elaine Hoover

Sincerely,

Elaine Hoover

Bill and William Hoover



RECEIVED  
JAN 21 1992  
ZONING OFFICE  
Deputy Zoning Commissioner  
Timothy Kotroco,  
Old Court House, Towson Md.  
Room 113

Dear Sir:

Since I was unable to attend the zoning hearing for case 92-237-SPH, it has been suggested that I present in writing my support for the ban on the conversion of single family dwellings to apartment dwellings in Academy Heights.

To revoke this ban would change the quiet residential character which caused me to move to this neighborhood nineteen years ago. Academy Heights has always been favored by couples with young children as a safe, quiet place to raise

VENABLE, BAETJER AND HOWARD

ATTORNEYS AT LAW

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

BALTIMORE, MD  
WASHINGTON, D.C.  
WELLS, VA  
TOWSON, MD  
DEL AIR, MD  
SUITE 800  
ONE CHURCH STREET  
P.O. BOX 1808  
ROCKVILLE, MARYLAND 20849-1808  
1201 E F STREET  
TAX: 301-278-8212

(301) 217-5603

March 3, 1992

Deputy Commissioner Timothy Kotroco  
Baltimore County Office of  
Zoning Administration  
400 Washington Avenue, Room 113  
Towson, Maryland 21204

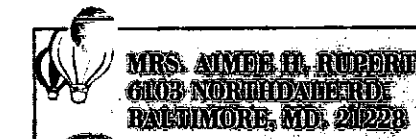
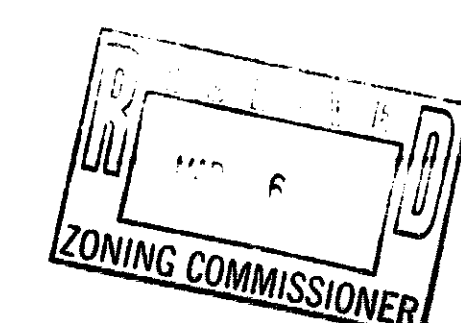
Re: Petition of Richard F. O'Brien and  
Louis F. O'Brien, Case No. 92-237-SPH

Dear Commissioner Kotroco:

As you will recall, on January 15, 1992 my clients and I were before you for a hearing seeking to establish a non-conforming use. At that time, you gave the Petitioners a week to file a Post-Trial Memorandum. Our Memorandum was filed with your office on January 22 and served by mail on the Homeowners' Association on January 21. You also gave the Petitioners' Association a week from the week of receipt of Petitioners' Memorandum to respond, which was on or about January 31.

I received a rebuttal Memorandum from the Association dated February 14, a full two weeks after the deadline which you set. The memo was sent to me at home by my office, as I am presently out on maternity leave. I received the Memorandum approximately February 22.

I am hesitant to ask you to disregard a memorandum filed by a pro se party for failure to comply with the time tables which you set; however, the late date of this Memorandum places my clients in a difficult position. I have a different recollection of many of the facts as related in the Memorandum of the Association. Without benefit of the record, I am unable to adequately rebut the Memorandum. My clients should not be forced to expend more money on legal fees because of the Association's failure to comply with your orders. If you are



January 13, 1992

Dear Mr. Kotroco, Deputy Zoning Commissioner  
I am writing to you concerning case 92-237-SPH as I am unable to attend the hearing.

I have lived at 6103 Northdale Road since August 1971 and I feel two-family homes should not be allowed to replace one-family homes in our area. The present homes and their owners do a good job in caring for their properties. Tenants will never care for the buildings and the surrounding as well as resident owners. I understand 6101 Northdale was a one family home.

Until recently this property was well cared for. During the last year the new owners have made changes to the interior and the outside has been neglected. I reported the changes to our acting president for Academy Heights. She claimed the new

Petitioner's  
Exhibit 1  
photograph  
in 92-237-SPH



Timothy Kotroco

11442  
to 603  
9  
H. Lambeth Road  
Baltimore, Maryland  
21228  
January 15, 1992  
3328-92

Zoning Commission  
Old Court House 1st floor  
Towson, Maryland 21204  
Dear Sir:

Concerning: Case Number 92-237 SPH -

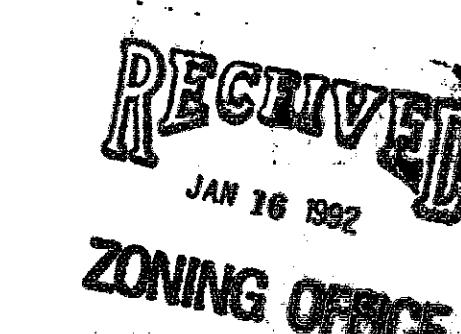
We are unable to attend the zoning hearing concerning 6161 Northdale Road. We are using this means to voice our objection to having any more two apartment dwellings in Academy Heights.

We do have some legal two apartment dwellings which were maintained as two apartments since 1965. Please, do not allow any more properties in this neighborhood to become two apartment dwellings.

One main reason is the parking facilities - now there are almost two cars for each house - if a dwelling is made into two apartments, that can well mean four cars to that one house.

Please, help us keep our community a single family dwelling development.

Thank you.  
Yours very truly,  
Elaine F. Hoover  
James H. Hoover



January 13, 1992

Timothy Kotroco  
Deputy Zoning Commissioner  
Old Court House  
Room 113  
Towson, MD 21204

Dear Mr. Kotroco:

We are writing to you regarding hearing number 92-237 SPH. We do not know the owner of this property but live in the 6100 block of Northdale Road and SUPPORT the continuation of this dwelling as a two apartment unit. To our knowledge, it has always been a two apartment dwelling.

We are in favor of this for two reasons:

1. The property owner probably bought this property to use for this purpose and should not be denied use of this property for that purpose just because residents of the community want to prohibit further NEW 2 units in the neighborhood. The neighborhood covenants prevent this anyway.
2. The property owner has used excellent judgment in selecting his tenants. The current tenant is a responsible member of the community and there have been no problems with the current arrangement. Living less than 6 houses away from the property, we would be aware of any problems of any kind.

Finally, if the owner of this property should lose his or her right to operate this property as a two unit dwelling, we hope that adequate time will be given for his tenant to make other arrangements for living.

Please feel free to call us if you have any questions. We are hopeful that the rights of the homeowner will be upheld in this case.

Sincerely,

Scott Harbison  
Beth Sandbower Harbison

Owners  
6151 Northdale Road  
Baltimore, MD 21228  
301-747-6039

PETITIONER'S  
EXHIBIT 2

3306-92

January 13, 1992

Timothy Kotroco  
Deputy Zoning Commissioner  
Old Court House  
Room 113  
Towson, MD 21204

Dear Mr. Kotroco:

We are writing to you regarding hearing number 92-237 SPH. We do not know the owner of this property but live in the 6100 block of Northdale Road and SUPPORT the continuation of this dwelling as a two apartment unit. To our knowledge, it has always been a two apartment dwelling.

We are in favor of this for two reasons:

1. The property owner probably bought this property to use for this purpose and should not be denied use of this property for that purpose just because residents of the community want to prohibit further NEW 2 units in the neighborhood. The neighborhood covenants prevent this anyway.
2. The property owner has used excellent judgment in selecting his tenants. The current tenant is a responsible member of the community and there have been no problems with the current arrangement. Living less than 6 houses away from the property, we would be aware of any problems of any kind.

Finally, if the owner of this property should lose his or her right to operate this property as a two unit dwelling, we hope that adequate time will be given for his tenant to make other arrangements for living.

Please feel free to call us if you have any questions. We are hopeful that the rights of the homeowner will be upheld in this case.

Sincerely,

Scott Harbison  
Beth Sandbower Harbison

Owners  
6151 Northdale Road  
Baltimore, MD 21228  
301-747-6039

RECEIVED  
JAN 15 1992  
ZONING OFFICE

ARMSTRONG, LIBER 3768, PAGE 372

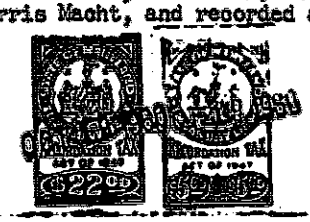
This Deed, Made this 17th day of October  
in the year one thousand nine hundred and sixty by and between  
WILLIAM EDWARD ARMSTRONG and MARY LULU ARMSTRONG, his wife  
of Baltimore County in the State of Maryland, of the first part, and  
MIRIAM E. BAKER and CLARA M. BAKER, his wife, of the same place  
of the second part.

Witnesseth, That in consideration of the sum of Five Dollars (\$5.00), and other good and valuable considerations, the receipt of which is hereby acknowledged  
the said William Edward Armstrong and Mary Lulu Armstrong, his wife  
do grant and convey unto the said Miriam E. Baker and Clara M. Baker, his wife, as tenants by the entirety, their

personal representatives and assigns all that lot of ground situated in the First Election District of Baltimore, Maryland, and described as follows, that is to say:  
Beginning for the same on the Southern side of Northdale Road at the distance of 796.32 feet westerly measured along the Southern side of Northdale Road from the Northwestern corner of the curve forming the intersection or meeting of the Southern side of Northdale Road and the Western side of Whitfield Road and running thence westerly bearing S 89° 15' 00" W 115.00 feet to a point in line with the center line of a partition wall there erected, thence running Southerly to, through and along the center line of said partition wall to the end thereof and continuing the same course in all 105 feet to the Southern side of an alley 16 feet wide there situate, thence running Southerly bearing S 89° 15' 00" W 115.00 feet to the end thereof and continuing the same course in all 105 feet to meet a line drawn Southerly from the place of beginning at right angles to Northdale Road, thence running Northerly reversing said line so drawn and bounding between 105 feet to the place of beginning. The improvements thereon being now known as No. 6161 Northdale Road.

BEING the same lot of ground described in a Deed of Assignment dated December 15th, 1925, and recorded among the Land Records of Baltimore County in Liber O.L.B. No. 2229, folio 150, from The Real Estate Company, a body corporate unto the Grantors herein.

SUBJECT to the Restrictions set forth in the following Deeds and Agreements: (1) Dated December 15, 1925, between The Gardens Company and The Thomas Company recorded among said Land Records in Liber O.L.B. No. 1820, folio 253. (2) Dated February 14th, 1929, between The Gardens Company and Morris Mehl, and recorded among said Land Records in Liber O.L.B. No. 2102, folio 323.



PETITIONER'S  
EXHIBIT 3



Plat to accompany Petition for Zoning ☐ Variance ☐ Special Hearing

PROPERTY ADDRESS: 161 Northonly Rd. Catonsville, MD 21228

Subdivision name: ACADEMY HEIGHTS

Plat book: 101P

OWNER: Lutz & Richard G. Glick

Owner as represented by:

Owner as represented by:

Owner as represented by:

Owner as represented by:

Owner as represented by:

Owner as represented by:

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92-237SPH

PETITIONER'S  
EXHIBIT 4

LOCATION INFORMATION  
County: Baltimore  
District: 15P  
Map: SW-AF  
Zone: DR-10-5  
Acres: 0.75  
Square Feet: 3255  
Sewer: ☐  
Water: ☐  
Chesapeake Bay Critical Area: ☐  
Zoning Office USE ONLY!  
Item: 1  
Case: 252/LG



BALTIMORE COUNTY  
OFFICE OF PLANNING AND ZONING  
OFFICIAL ZONING MAP

SCALE 1" = 200'	LOCATION CATONSVILLE	SHEET S.W. 2-F 252
DATE OF PHOTOGRAPHY JANUARY 1986		

92-237SPH